

# NEW APPLICATION



0000106940

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

OCT 01 1998

JAMES M. IRVIN  
CHAIRMAN  
RENZ D. JENNINGS  
COMMISSIONER  
CARL J. KUNASEK  
COMMISSIONER

DOCKETED BY

DOCKET NO.

T-01051A-98-0575

In the Matter of  
  
Application of U S WEST  
COMMUNICATIONS, INC. for  
deregulation of its voice  
messaging service.

Docket No.

U S WEST COMMUNICATIONS, INC.'S  
PETITION FOR DEREGULATION OF ITS  
VOICE MESSAGING SERVICE,

Pursuant to A.R.S. § 40-281(E), U S WEST Communications, Inc. ("USWC") petitions the Arizona Corporation Commission ("the Commission") to deregulate voice messaging provided by USWC in Arizona, and for the withdrawal of the filed tariffs applicable to such services. As grounds for this petition, USWC states:

1. This petition is made pursuant to A.R.S. § 40-281(E), which provides:

When the commission determines after notice and hearing that any product or service of a telecommunications corporation is neither essential nor integral to the public service rendered by such corporation, it shall declare that such product or service is not subject to regulation by the commission.

2. In addition, the legal basis for deregulating telecommunications services in Arizona derives from Article 15, § 2 of the Arizona Constitution and the judicial decisions interpreting it. The Constitution and case law establish the principle that power of the Commission to regulate a service

1 depends on the answer to four questions: (1) whether the service  
2 constitutes "transmitting messages or furnishing public telegraph  
3 or telephone service" under Article 15, § 2 of the Arizona  
4 Constitution; (2) if so, whether the service is presently an  
5 essential and integral part of "transmitting messages or  
6 furnishing public telegraph or telephone service;" (3) whether  
7 the service is clothed with a public interest, such as to make  
8 the rates, charges and methods of provision a matter of public  
9 concern, and; (4) whether the service is a common-carriage  
10 operation. All four questions must be answered in the  
11 affirmative for the Commission to have the authority to regulate  
12 a service.

13       3. The voice messaging offered by USWC does not constitute  
14 "transmitting messages or furnishing public telegraph or  
15 telephone service" under Article 15, § 2 of the Arizona  
16 Constitution. Rather than transmit messages or furnish telephone  
17 service, voice messaging permits (1) callers to record their  
18 transmitted message and (2) recipients (subscribers) to store and  
19 retrieve the recorded message. Thus, voice messaging is totally  
20 independent of basic telephone service.

21       4. Even assuming voice messaging could be construed as  
22 "transmitting messages or furnishing public telegraph or  
23 telephone service," it is not an "essential and integral"  
24 concomitant of basic telephone service. That is, basic telephone  
25 service can be and is provided to residential and business  
26 customers irrespective of voice messaging. Moreover, unlike

1 basic telephone service, only a small percentage of the public  
2 has any interest in, let alone any need for, voice messaging.

3 5. Substantial competition exists in Arizona for the  
4 provision of voice messaging. There are no less than 50  
5 companies, not including USWC, that also offer residential and  
6 business customers in Arizona voice messaging or answering  
7 services. The following is a non-inclusive list of those  
8 providers:

9 A Professional Image  
10 Abbey's Answering Service  
11 ABCom  
12 Answering Service by Procommunications  
13 Acction Answering Service  
14 Actel Communications, Inc.  
15 Action 1 Communications  
16 Accurate Answering Services  
17 Adventure Communications  
18 Affordable Voice Mail  
19 American Voice Mail, Inc.  
20 Answer Arizona  
21 Answer 1  
22 Answer Phoenix  
23 AZ Com Wireless Telcom Solutions  
24 Aztec Answering Service  
25 Aztec Voice Messaging Services  
26 Basset Telecom

1	Basset Voice Mail
2	Brooks Communications, Inc.
3	Business Minders, Inc.
4	Call Dynamics, Inc.
5	Central Avenue Postal Center
6	Commworld of Phoenix-East
7	Copper State Communications, Inc.
8	Discount Voice Mail
9	HQ Business Centers
10	Insyst Inc.
11	Information Systems Group
12	Interoffice
13	LDDS Worldcom
14	Lucent Technologies
15	Messagelink Communications Corp.
16	Metrocall
17	Nortan Communications
18	One Number Connect
19	Partel, Inc.
20	Phones Plus of Arizona
21	Scottsdale Answering Service
22	Solution Masters
23	Southwest Automated Voicecom
24	Star Communications
25	TEB Communications, Inc.
26	Telephone Warehouse, Inc.

1           The Answer Service  
2           Valleywide Answering Service  
3           Valley Wide Communications  
4           Voice Plus Inc.  
5           Voice Solutions  
6           Voice-Tel  
7           Yomax

8   Therefore, if a company does not offer voice messaging service of  
9   adequate reliability and quality or raises its prices, a customer  
10   simply can choose among various other suppliers of voice  
11   messaging and answering services.

12         6.   In addition to the several competitors of USWC that  
13   provide voice messaging and answering services, telephone  
14   answering devices are available to residential and small business  
15   customers through retail stores. The following is a non-  
16   inclusive sample of retail outlets that offer such devices in  
17   Arizona:

18           Best Buy  
19           Circuit City  
20           Fry's  
21           K-Mart  
22           Montgomery Ward  
23           Office Max  
24           Sears  
25           Staples  
26           Target

1        Answering machines have varying degrees of prices depending  
2 upon the specific features and quality desired by the customer.  
3 Because answering machines offer an alternative and substitute to  
4 voice messaging and answering services, there is little concern  
5 for the rates, charges and methods for providing voice messaging.


6        7.    Voice messaging is not a common carriage service. A  
7 common carriage service involves the carrying or transporting of  
8 messages or goods of others for hire. Voice messaging does not  
9 involve any "carriage" of messages, but simply permits  
10 subscribers to store and retrieve a recorded message. See  
11 American Cable TV v. Arizona Public Service, 143 Ariz. 273, 279,  
12 693 P.2d 928, 934 (App. 1983) (cable is not common carriage  
13 service because it does not deal with the carriage of messages;  
14 it deals with the provision of entertainment and programming).  
15 Any carrying or transporting of messages exists independent of  
16 voice messaging itself.

17        8.    The Commission lacks authority to regulate USWC's voice  
18 messaging service in the State of Arizona because: (1) voice  
19 messaging does not constitute "transmitting messages or  
20 furnishing public telegraph or telephone service;" (2) voice  
21 messaging is not an "essential and integral" component to basic  
22 telephone service provision; (3) there is a substantial amount of  
23 competition for voice messaging and answering services, as well  
24 as an availability of alternative products, that ensure customer  
25 bargaining power; and (4) voice messaging is not a common-  
26 carriage service.

1 Based on the foregoing, USWC respectfully petitions the  
2 Commission to deregulate USWC's voice messaging services within  
3 the State of Arizona.

4 DATED this 25th day of September, 1998.

5 U S WEST, INC.  
6 Law Department  
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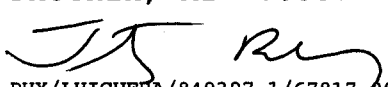
13 ORIGINAL AND TEN COPIES  
14 of the foregoing hand-delivered for  
15 filing this 25th day of September, 1998, to:

15 ARIZONA CORPORATION COMMISSION  
16 DOCKET CONTROL  
17 1200 West Washington Street  
18 Phoenix, AZ 85007

19 COPIES of the foregoing  
20 hand-delivered this 25th  
21 day of September, 1998, to:

22 Ray Williamson, Acting Director  
23 Utilities Division  
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